

# State of California



## Fair Political Practices Commission

P.O. BOX 307 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

October 29, 1984

Jan Klement  
Portola City Attorney  
600 W. Main Street  
P.O. Box 596  
Quincy, CA 95971

Re: Advice Letter No. A-84-249

Dear Mr. Klement:

Thank you for your request for advice on the conflict of interest provisions of the Political Reform Act.

### FACTS

Portola City Councilwoman Roudebush is married to a reserve deputy sheriff for Plumas County. During fiscal year 1984, he received \$1,100-1,200 for his services. Mr. Roudebush also owns 100% of K.A.D. Enterprises, which engages in ammunition reloading and other similar activities. During fiscal year 1983-1984, the business sold \$969.91 of reloaded ammunition to the Plumas County Sheriff's Department. The Portola City Council is planning to negotiate and approve a contract with the Plumas County Sheriff's Department for police services for the City.

### QUESTION PRESENTED

Under the provisions of the Political Reform Act, is Councilwoman Roudebush required to disqualify herself from the negotiation and approval of a contract with the Plumas County Sheriff's Department for police services?

### CONCLUSION

The provisions of the Political Reform Act will not prohibit Councilwoman Roudebush from negotiating and approving a contract with the Plumas County Sheriff's Department for police services.

### DISCUSSION

Government Code Section 87100 prohibits a public official from making, participating in making, or in any way attempting to use her official position to influence, a governmental decision in which she knows or has reason to know she has a financial interest. An official has a "financial interest" in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect,<sup>1/</sup> distinguishable from the effect on the public generally on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

\* \* \*

(c) Any source of income . . . aggregating two hundred fifty dollars (\$250) or more in value provided to . . . the public official within 12 months prior to the time when the decision is made....

(Gov. Code Section 87103.)

#### Employment as Reserve Deputy Sheriff:

Councilwoman Roudebush has a community property interest in her husband's income. (Section 82030.) However, the Act exempts from the definition of "income" salary received from a governmental entity. Therefore, the money paid to her husband as a Plumas County reserve deputy sheriff does not constitute "income" and the County is not a source of income to Councilwoman Roudebush.

#### Ownership of K.A.D. Enterprises:

Councilwoman Roudebush has an investment interest (100%) in K.A.D. Enterprises.<sup>2/</sup> Her sources of income include the business entity and those clients who paid the business \$250 or

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<sup>1/</sup> See the enclosed copy of 2 Cal. Adm. Code Section 18702 which explains the phrase "material financial effect."

<sup>2/</sup> Councilwoman Roudebush is deemed to have the same investment interests as her spouse. (Section 82034.)

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Jan Klement  
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more during the last 12 months. Plumas County, which is a client of K.A.D. Enterprises, is a source of income to Councilwoman Roudebush.<sup>3/</sup> She must disclose this source of income on her Statement of Economic Interests.

Councilwoman Roudebush must disqualify herself from the negotiation and approval of the contract with Plumas County for police services if the decisions concerning the contract will foreseeably have a material financial effect on K.A.D. Enterprises. You stated that K.A.D. Enterprises does not expect to gain or lose any business as a result of the decisions on the contract. Assuming this to be correct, Councilwoman Roudebush may participate in the contract decisions.

Although Plumas County is a source of income to Councilwoman Roudebush, this will not be a basis for disqualification on the contract decisions. Even if the decisions will materially affect Plumas County, the County represents all of the people of Plumas County and, therefore, an effect on the County affects the public generally. (See Section 87103.)

I hope that I have answered all of your questions for you. If I can be of any additional help, please feel free to contact me at (916) 322-5901.

Very truly yours,

*Janis Shank McLean*  
Janis Shank McLean  
Staff Attorney  
Legal Division

JSM:plh  
Enclosure

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<sup>3/</sup> I am assuming, for purposes of this letter, that at least \$250 of the \$969.91 was paid to K.A.D. Enterprises during the last 12 months.

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QUINCY CALIF 95971

**J. Klement**

ATTORNEY AT LAW

TELEPHONE  
916) 283-2410

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October 3, 1984

Mrs. Janice McLean  
Attorney at Law  
Fair Political Practice Commission  
1100 K Street  
Sacramento, California 95814

RE: City of Portola, Disqualification of  
Mrs. Roudebush

Dear Mrs. McLean:

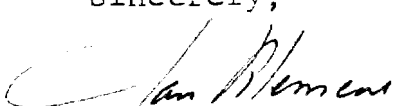
Reference is made to the materials I forwarded to you  
on October 2, 1984.

I attended the City Council meeting at 5:00 p.m., on  
October 2, 1984 and presented my written summary, a copy  
of which was forwarded to you on October 2, 1984. On  
motion made and seconded, and on my insistence, I was  
instructed to request an official opinion from F.P.P.C.

Request is hereby made for said opinion.. There is no  
argument with the facts as recited in my presentation.

Your reply at your earliest convenience will be highly  
appreciated.

Sincerely,

  
JAN KLEMENT  
cc: City of Portola  
JK/b

600 WEST MAIN STREET  
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**J. Klement**

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OCT 3 12 29 PM '84

October 2, 1984

Mrs. Janice McLean  
Attorney at Law  
Fair Political Practice Commission  
1100 K Street  
Sacramento, California 95814

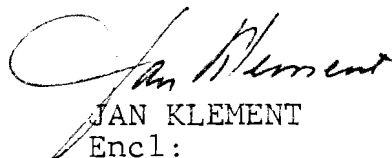
Dear Mrs. McLean:

I would like to use this opportunity to express my appreciation for all your assistance, time, research and advice in helping me resolve the questions concerning the potential necessity to disqualify a council member.

I am enclosing a copy of my summary for your review and criticism, if necessary.

Again, thank you a lot.

Sincerely,

  
JAN KLEMENT

Encl:

JK/b

October 2, 1984

Mayor Sandra Waterhouse and  
Council Members  
City of Portola  
Post Office Box 1225  
Portola, California 96122

Dear Mme. Mayor and Council Members:

The following are facts and opinions relating to the question whether or not Councilmember Roudebush must abstain from voting on the proposed police contract due to a conflict of interest.

Facts:

1. Mrs. Roudebush's husband is a reserve deputy sheriff who has been paid during the fiscal year of 1984 between \$1100.00 and \$1200.00 for services rendered to the sheriff's office of Plumas County. The services are performed in a manner in which the Sheriff's Office contracts for special services for a dance, to the Forest Service, Chamber of Commerce, or similar activities. The parties requesting services pay the Sheriff's Office, which in turn pay a per hour wage to the reserve deputy.

2. Mr. Roudebush owns a business, known as K.A.D. Enterprises. The business does ammunition reloading and associated activities.

In the fiscal year 1983-1984, the business sold \$969.91 of re-loaded ammunition to the Sheriff Department.

Issue(s):

The major issue is whether or not Mrs. Roudebush may legally participate and vote in the procedures relating to the pending negotiations and contract for police services to be rendered by the County of Plumas Sheriff Department.

Discussion:

There is obviously no question that the funds are income.

Income is defined in Section 82030 of the Government Code, as, except as provided in subsection (b), a payment received, including

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but not limited to any salary, wages, advance, proceeds from any sale, and including any community property interest in income of a spouse. It includes, among others the prorata share of any income of any business entity in which a person or spouse owns more than 10%.

"Income" does not include income prior to the time any statement or action is required under this title.

Subsection (b) does not include, as stated in 82030 (b)(2) "Salary and reimbursement for expenses or per diem received from a state, local or federal government agency....."

The Conflict of Interest Code commencing with Government Code 87100 prohibits participation in the decision making process when he (or she) knows or has reason to know he (or she) has a financial interest.

Section 87103 states that an official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

Any business entity in which the public official has a direct or indirect investment worth more than \$1000.00, and also, if the official is a director, officer, partner, etc., and I include therein a community interest.

Since Mrs. Roudebush has a community interest in the business, and the business is in fact selling to the Sheriffs Office on an on going basis, and, the business (~~her~~ interest) does exceed the statutory limitation on the amount, her participation and vote appear to be prohibited if "it is reasonably foreseeable that the decision (or participation) will have a material financial effect," on the business.

I suggest that the key words are "that the decision will have a material financial effect."

The question thus arises whether or not the decision and/or participation regarding the police contract discussions will have a material effect on Mrs. Roudebush's business, or otherwise stated, does her decision or participation cause the Sheriff Department to buy more bullets, etc., from her business. i.e. a significant increase, from the County, in his business, or perhaps a full time deputy position.

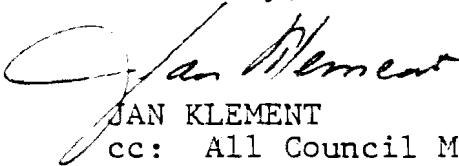
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Further, assume there is an effect on the County, the effect on the public generally, there is an exemption, which is the "Public Generally Exemption." That exemption comes into operation as the result of the reasoning that the County represents the public. The situation would be different if the business was done with a private organization which bought from or sold to the members of the Council having an interest. The reasoning appears to be that since the County serves the public, the public is deemed protected.

Conclusion:

1. The fact that Mr. Roudebush is a reserve deputy sheriff does not disqualify Mrs. Roudebush from participating or voting, because of the exemption provided by law.
2. The fact that Mr. Roudebush sells ammunition to the County of Plumas does not prohibit Mrs. Roudebush's participation or vote since a decision regarding the police services contract will not materially effect their business, and further, is exempt under the "Public Generally Exemption."

Sincerely,



JAN KLEMENT

cc: All Council Members  
JK/b